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10/769,156	01/30/2004	David A. Varley	125426-1090	7777

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EXAMINER

VARNER, STEVE M

ART UNIT PAPER NUMBER

3635

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/769,156

**Applicant(s)**

VARLEY ET AL.

**Examiner**

Steve M Vamer

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

Claims 1-44 are cancelled.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 45-55, 58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6-8, 15, 16, 18-20, of Varley et al. U.S. Patent No. 6722416 in view of Miyagawa et al.

Regarding claim 45, Varley et al. '416 claim 1 claims flexible curtain closure member having a transverse bottom edge and opposed side edges; spaced apart guide tracks.

Verley et al. '416 does not claims at least one of said guide tracks comprising channel shaped member having a web and opposed flanges, said flanges including reentrant distal ends providing a reduced width slot between said flanges. Miyagawa et al. shows channel shaped member (6) having a web and opposed flanges, said flanges including reentrant distal ends providing a reduced width slot between said flanges (Fig.

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4). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a channel as in Miyagawa et al. in the structure of Varley et al. '416 to guide the windlock members.

Varley et al. '416 claim 1 claims opposed windlock members supported on said closure member at said side edges thereof.

Regarding claim 46, Varley et al. '416 claim 4 claims said windlock members are disposed on opposite ends of respective elongated struts secured to said closure member.

Regarding claim 47, Varley et al. '416 claim 6 claims said windlock members are formed as separate parts are removably secured to said struts by mechanical fasteners, respectively.

Regarding claim 48, Varley et al. '416 claim 7 claims curtain stiffening means secured said closure member adjacent said bottom edge

Regarding claim 49, Varley et al. '416 claim 8 claims said stiffening means comprises plural interconnected links extending across said closure member from said side edge toward said other side edge and adjacent said bottom edge, said links being secured to said closure member and to each other respectively.

Regarding claim 50, Varley et al. '416 claim 18 claims said links are pivotally connected.

Varley et al. '416 claim 18 does not claim fasteners. Fasteners are well known in the art. It would have been obvious to one of ordinary skill in the art to use fasteners as is known in the structure of Varley et al. '416 to connect the links.

Regarding claim 51, Varley et al. '416 claim 15 claims plurality of flexible bags containing dense material, respectively, and secured to said curtain adjacent said bottom edge, substantially side by side across said bottom edge.

Regarding claim 52, Varley et al. '416 claim 15 claims said bags at least partially filled with particulate material selected from a group consisting of steel shot, welding slag, sand and dense particulate material.

Regarding claim 53, Varley et al. '416 claim 16 claims outer envelope disposed over said bags.

Regarding claim 54, Varley et al. '416 claim 19 claims an obstruction detector secured to said curtain at said bottom edge and adjacent said bags.

Regarding claim 55, Varley et al. '416 claim 20 claims windlock members disposed along said one side edge include bosses having surfaces engageable with said flanges.

Varley et al. '416 claim 20 does not show engageable at distal ends. Miyagawa et al. shows engageable at distal ends (Fig. 4). It would have been obvious to one of ordinary skill in the art to engage the bosses at the distal ends of the flanges where there is a narrow neck to engage the bosses.

Regarding claim 58, Varley et al. '416 claims 2, 3, 4, 6, claims said windlock members are formed as separate parts attached to elongated struts extending across said door from said one side edge to said other side edge.

Claims 59-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 15-19, of U.S. Patent

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No. 6722416. Although the conflicting claims are not identical, they are not patentably distinct from each other because.

Regarding claim 59, Varley et al. '416 claim 1, 15, claims a flexible curtain closure member having a transverse bottom edge and opposed side edges; spaced apart guide tracks; and curtain stiffening means secured said closure member adjacent said bottom edge.

Regarding claim 60, Varley et al. '416 claims 17, 18, claim said stiffening means comprises plural interconnected links extending across said closure member from one side edge toward the other side edge and adjacent said bottom edge, said links being secured to said closure member and to each other, respectively.

Regarding claim 61, Varley et al. '416 claim 18 claims said links are pivotally connected to each other.

Varley et al. '416 claim 18 does not claim fasteners. Fasteners are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use fasteners as is well known in the structure of Varley et al. '416 to connect the links.

Regarding claim 62, Varley et al. '416 claim 15 claims plurality flexible bags containing dense material, respectively, and secured to said closure member adjacent said bottom edge, substantially side by side across said bottom edge.

Regarding claim 63, Varley et al. '416 claim 15 claims said bags at least partially filled with particulate material selected from a group consisting steel shot, welding slag, sand and dense particulate material.

Regarding claim 64, Varley et al. '416 claim 16 claims flexible outer envelope disposed over said bags.

Regarding claim 65, Varley et al. '416 claim 19 claims obstruction detector secured to said closure member at said bottom edge and adjacent said bags.

Regarding claim 66, Varley et al. '416 claim 1, claims opposed windlock members supported on said closure member said side edges, respectively,

Regarding claim 67, Varley et al. '416 claim 4 claims the windlock members are disposed opposite ends of respective elongated struts secured to said closure member.

Regarding claim 68, Varley et al. '416 claim 6 claims said windlock members are formed as separate parts and are removably secured to said struts by mechanical fasteners, respectively.

Claim 57 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6722416 in view of Maas et al.

Regarding claim 57, Varley et al. '416 claim 1 claims the basic claimed structure. Varley et al. '416 does not claim self-lubricating plastic. Maas et al. teaches self-lubricating plastic (Col. 2, Line 57). It would have been obvious to use self-lubricating plastic as in Mass et al. in the structure of Varley et al. '416 to decrease friction between the windlock members and the channel.

### ***Claim Objections***

Claim 56 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosenoy shows windstrap for pliable roll type overhead door. Serbu shows magnetic closure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

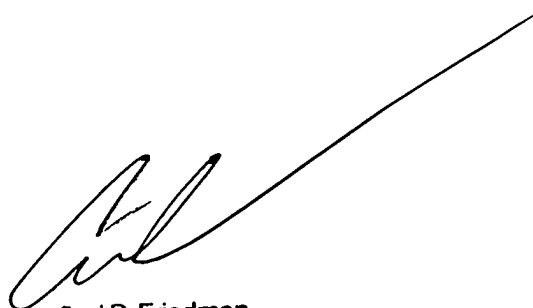


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A handwritten signature, possibly reading 'd' or 'N', written in black ink.A large, stylized handwritten signature in black ink, likely belonging to Carl D. Friedman.

Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600